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In re Application of	:	OFFICE OF PETITIONS
Roman Dubrovsky et al	:	
Application No. 10/796,458	:	DECISION ON PETITION
Filed: March 9, 2004	:	UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. NJIT-3P	:	

This is a decision on the petition under 37 CFR 1.78(a)(6), filed March 9, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of prior-filed provisional Application No. 60/453,805, filed March 11, 2003, as set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Additionally, the instant nonprovisional application must be pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(ii). Further, the nonprovisional application claiming the benefit of the prior-filed provisional application must have been filed within twelve months of the filing date of the prior-filed provisional application.

The petition does not satisfy item (3) above. In this regard, the statement of unintentional delay is unsigned and is therefore unacceptable. Petitioner's attention is directed to 37 CFR 1.33(b), which states.

Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

- (1) A registered practitioner appointed in compliance with § 1.32(b);
- (2) A registered practitioner not of record who acts in a representative capacity under the provisions of § 1.34;
- (3) An assignee as provided for under § 3.71(b) of this chapter; or
- (4) **All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter [emphasis added].**

Additional attention is directed to 37 CFR 1.4(d)(1), which states:

(d)(1) Handwritten signature. Each piece of correspondence, except as provided in paragraphs (d)(2), (d)(3), (e) and (f) of this section, filed in an application, patent file, or other proceeding in the Office which requires a person's signature, must:

- (i) Be an original, that is, have an original handwritten signature personally signed, in permanent dark ink or its equivalent, by that person; or
- (ii) Be a direct or indirect copy, such as a photocopy or facsimile transmission (§ 1.6(d)), of an original. In the event that a copy of the original is filed, the original should be retained as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Therefore, as the petition containing the statement of unintentional delay is not signed by all the inventors and the record herein fails to disclose that petitioner herein (Roman Dubrovsky) was ever given a power of attorney to act on behalf of the other inventor, **or that he is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b)**, the petition is considered to not contain a proper statement of unintentional delay. In view of the above, a renewed petition under 37 CFR 1.78(a)(6) signed by all the inventors of record or in compliance with 37 CFR 1.4(d)(1), (d)(2), (d)(3), (e) and (f), or, if petitioner herein is the assignee of the entire right, title and interest in this application, a proper statement satisfying the provisions of 37 CFR 3.73(b), must be submitted if petitioners desire to claim the benefit of the above-noted provisional application.

It is likewise noted that the reply to the non-final Office action of December 15, 2005 does not contain the signature of the inventors in compliance with 37 CFR 1.33(b) and 1.4, as noted *supra*.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Service Window
 Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By fax: (571) 273-8300
 ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3218.


Frances Hicks
Petitions Examiner
Office of Petitions